

PATENT COOPERATION TREATY

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INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY
(Chapter I of the Patent Cooperation Treaty)

(PCT Rule 44bis)

Applicant's or agent's file reference 2960/121WO	FOR FURTHER ACTION		See item 4 below
International application No. PCT/US2005/044008	International filing date (<i>day/month/year</i>) 02 December 2005 (02.12.2005)	Priority date (<i>day/month/year</i>) 02 December 2004 (02.12.2004)	
International Patent Classification (8th edition unless older edition indicated) See relevant information in Form PCT/ISA/237			
Applicant CONFORMIS, INC.			

1. This international preliminary report on patentability (Chapter I) is issued by the International Bureau on behalf of the International Searching Authority under Rule 44 bis.1(a).
2. This REPORT consists of a total of 7 sheets, including this cover sheet.

In the attached sheets, any reference to the written opinion of the International Searching Authority should be read as a reference to the international preliminary report on patentability (Chapter I) instead.
3. This report contains indications relating to the following items:

<input checked="" type="checkbox"/> Box No. I	Basis of the report
<input checked="" type="checkbox"/> Box No. II	Priority
<input checked="" type="checkbox"/> Box No. III	Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
<input type="checkbox"/> Box No. IV	Lack of unity of invention
<input checked="" type="checkbox"/> Box No. V	Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
<input type="checkbox"/> Box No. VI	Certain documents cited
<input type="checkbox"/> Box No. VII	Certain defects in the international application
<input type="checkbox"/> Box No. VIII	Certain observations on the international application
4. The International Bureau will communicate this report to designated Offices in accordance with Rules 44bis.3(c) and 93bis.1 but not, except where the applicant makes an express request under Article 23(2), before the expiration of 30 months from the priority date (Rule 44bis.2).

The International Bureau of WIPO 34, chemin des Colombettes 1211 Geneva 20, Switzerland Facsimile No. +41 22 338 82 70 Form PCT/IB/373 (January 2004)	Date of issuance of this report 05 June 2007 (05.06.2007)
	Authorized officer Beate Giffo-Schmitt e-mail: pt03.pct@wipo.int

From the INTERNATIONAL BUREAU

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NOTIFICATION CONCERNING
TRANSMITTAL OF COPY OF INTERNATIONAL
PRELIMINARY REPORT ON PATENTABILITY
(CHAPTER I OF THE PATENT COOPERATION
TREATY)

(PCT Rule 44bis.1(c))

To:

SUNSTEIN, Bruce, D.
Bromberg & Sunstein LLP
125 Summer Street
Boston, MA 02110-1618
ETATS-UNIS D'AMERIQUE

DOCKETED

Date of mailing (day/month/year)
14 June 2007 (14.06.2007)

Applicant's or agent's file reference
2960/121WO

IMPORTANT NOTICE

International application No.
PCT/US2005/044008

International filing date (day/month/year)
02 December 2005 (02.12.2005)

Priority date (day/month/year)
02 December 2004 (02.12.2004)

Applicant

CONFORMIS, INC. et al

The International Bureau transmits herewith a copy of the international preliminary report on patentability (Chapter I of the Patent Cooperation Treaty)

RECEIVED

JUN 21 2007

BROMBERG & SUNSTEIN LLP

The International Bureau of WIPO
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From the
INTERNATIONAL SEARCHING AUTHORITY

REC'D 29 MAR 2006

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To:

see form PCT/ISA/220

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WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY
(PCT Rule 43bis.1)

Date of mailing
(day/month/year) see form PCT/ISA/210 (second sheet)

Applicant's or agent's file reference
see form PCT/ISA/220

FOR FURTHER ACTION
See paragraph 2 below

International application No.
PCT/US2005/044008

International filing date (day/month/year)
02.12.2005

Priority date (day/month/year)
02.12.2004

International Patent Classification (IPC) or both national classification and IPC
INV. A61B17/17 A61B17/15

Applicant
CONFORMIS, INC.

1. This opinion contains indications relating to the following items:

- ☒ Box No. I Basis of the opinion
- ☒ Box No. II Priority
- ☒ Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
- ☐ Box No. IV Lack of unity of invention
- ☒ Box No. V Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
- ☐ Box No. VI Certain documents cited
- ☐ Box No. VII Certain defects in the international application
- ☐ Box No. VIII Certain observations on the international application

2. FURTHER ACTION

If a demand for international preliminary examination is made, this opinion will usually be considered to be a written opinion of the International Preliminary Examining Authority ("IPEA"). However, this does not apply where the applicant chooses an Authority other than this one to be the IPEA and the chosen IPEA has notified the International Bureau under Rule 66.1bis(b) that written opinions of this International Searching Authority will not be so considered.

If this opinion is, as provided above, considered to be a written opinion of the IPEA, the applicant is invited to submit to the IPEA a written reply together, where appropriate, with amendments, before the expiration of three months from the date of mailing of Form PCT/ISA/220 or before the expiration of 22 months from the priority date, whichever expires later.

For further options, see Form PCT/ISA/220.

3. For further details, see notes to Form PCT/ISA/220.

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WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY

International application No.
PCT/US2005/044008

Box No. I Basis of the opinion

1. With regard to the **language**, this opinion has been established on the basis of the international application in the language in which it was filed, unless otherwise indicated under this item.
☐ This opinion has been established on the basis of a translation from the original language into the following language , which is the language of a translation furnished for the purposes of international search (under Rules 12.3 and 23.1(b)).
2. With regard to any **nucleotide and/or amino acid sequence** disclosed in the international application and necessary to the claimed invention, this opinion has been established on the basis of:
 - a. type of material:
☐ a sequence listing
☐ table(s) related to the sequence listing
 - b. format of material:
☐ in written format
☐ in computer readable form
 - c. time of filing/furnishing:
☐ contained in the international application as filed.
☐ filed together with the international application in computer readable form.
☐ furnished subsequently to this Authority for the purposes of search.
3. ☐ In addition, in the case that more than one version or copy of a sequence listing and/or table relating thereto has been filed or furnished, the required statements that the information in the subsequent or additional copies is identical to that in the application as filed or does not go beyond the application as filed, as appropriate, were furnished.
4. Additional comments:

Box No. II Priority

1. ☒ The validity of the priority claim has not been considered because the International Searching Authority does not have in its possession a copy of the earlier application whose priority has been claimed or, where required, a translation of that earlier application. This opinion has nevertheless been established on the assumption that the relevant date (Rules 43bis.1 and 64.1) is the claimed priority date.
2. ☐ This opinion has been established as if no priority had been claimed due to the fact that the priority claim has been found invalid (Rules 43bis.1 and 64.1). Thus for the purposes of this opinion, the international filing date indicated above is considered to be the relevant date.
3. Additional observations, if necessary:

WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY

International application No.
PCT/US2005/044008

Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability

The questions whether the claimed invention appears to be novel, to involve an inventive step (to be non obvious), or to be industrially applicable have not been examined in respect of:

☐ the entire international application,

☒ claims Nos. 9-13

because:

☐ the said international application, or the said claims Nos. relate to the following subject matter which does not require an international preliminary examination (*specify*):

☐ the description, claims or drawings (*indicate particular elements below*) or said claims Nos. are so unclear that no meaningful opinion could be formed (*specify*):

☐ the claims, or said claims Nos. are so inadequately supported by the description that no meaningful opinion could be formed.

☒ no international search report has been established for the whole application or for said claims Nos. 9-13

☐ the nucleotide and/or amino acid sequence listing does not comply with the standard provided for in Annex C of the Administrative Instructions in that:

the written form

☐ has not been furnished

☐ does not comply with the standard

the computer readable form

☐ has not been furnished

☐ does not comply with the standard

☐ the tables related to the nucleotide and/or amino acid sequence listing, if in computer readable form only, do not comply with the technical requirements provided for in Annex C-bis of the Administrative Instructions.

☐ See separate sheet for further details

**WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY**

International application No.
PCT/US2005/044008

Box No. V Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

1. Statement

Novelty (N)	Yes: Claims	
	No: Claims	1-8
Inventive step (IS)	Yes: Claims	
	No: Claims	1-8
Industrial applicability (IA)	Yes: Claims	1-8
	No: Claims	

2. Citations and explanations

see separate sheet

Re Item III.

In accordance with Rule 67.1(iv) PCT, claims 9-13 are exempted from international preliminary examination, since they describe methods of medical treatment. In particular, the method described in independent claim 9 includes the step of drilling an aperture into the surface of the patella, which is part of a method of treatment of a human or animal body by surgery and is therefore exempted from examination (see the PCT International Search and Preliminary Examination Guidelines, Ch. 9.08).

Re Item V.

1. Reference is made to the following documents:

D1 : US 5 129 908 A (PETERSEN ET AL) 14 July 1992 (1992-07-14)

D2 : US 5 885 298 A (HERRINGTON ET AL) 23 March 1999 (1999-03-23)

2. The present application does not meet the criteria of Article 33(1) PCT, because the subject-matter of claim 1 is not new in the sense of Article 33(2) PCT. Document D1 discloses (the references in parentheses applying to this document) a drill-guide for engaging a surface of a patella, the drill guide comprising a mould (70, 80) having a first surface (128) that is configured to substantially match the surface of the patella (see column 6, line 38 to column 8, line 35, column 4, lines 50-64 and figures 1, 3 and 4).

Thus, document D1 discloses all of the technical features of claim 1. In addition, the aforementioned disclosure of document D1 anticipates the subject-matter of dependent claims 2-8.

The same result with respect to the lack of novelty of the subject-matter of claims 1-3 and 6 is obtained with document D2 (see column 4, lines 28-40, column 9, line 33 to column 10, line 9 and figure 3).

Therefore, the subject-matter of claims 1-8 is not novel (Art. 33(2) PCT) and as such these claims do not meet the criteria of Article 33(1) PCT.

**WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING
AUTHORITY (SEPARATE SHEET)**

International application No.

PCT/US2005/044008

3. Claim 1 has not been delimited with respect to the closest prior art (document D1 or D2), which would have been appropriate (Rule 6.3(b) PCT).
4. Reference signs have not been used throughout the claims, which would have been appropriate (Rule 6.2(b) PCT).
5. The documents D1 and D2 should have been identified in the description and the background art disclosed therein briefly discussed (Rule 5.1(a)(ii) PCT).